It is, I think, obvious from these provisions that the inquiry into the debtor's affairs shall be strictly under the control of the Court, and the Official Assignee's Report, so far as concerns the debtor's affairs (apart from his conduct during the bankruptcy), should be based on the debtor's statement of affairs and his public examination. That does not mean that it is not open to the Official Assignee to question the debtor about his affairs. It is very desirable that he should have power to do so, otherwise the public examination might be uselessly prolonged. In certain circumstances, where fresh evidence has come into the hands of the Official Assignee since the conclusion of the Public Examination, it may also be necessary for the Official Assignee to further examine the debtor with a view to asking the Court to reopen the Public Examination or to examine him in open Court under section 31. But it is a very different thing when the Official Assignee treats a private examination within the precincts of the Bankruptcy Office as the equivalent of the statutory examination of the debtor in open Court, and attempts to use any answers which he may have extracted for the purpose of criticising the bankrupt's conduct prior to his bankruptcy.

The undesirability of this procedure is emphasized by the facts of the present case. The bankrupt was asked in May 1937 about the details of a very complicated bankruptcy, which was bound up with the liquidation of the company "P. A. Beins. Ltd." in 1929, when he had not had access to his papers or books for 7 or 8 years. In these circumstances, his answers, however honestly given, were not likely to be of any value whatever: nevertheless, they have been made the basis of adverse comments by the Official Assignee who has relied on them to ask the Court to refuse the application for discharge altogether.

Although, as I have said, there is no objection to the Official Assignee questioning the bankrupt at any stage of the proceedings, I can find no authority for the present practice under which, as I understand, the bankrupt is put on oath, and is frequently required to swear an affidavit. I see no objection to the bankrupt's statements being recorded in writing, or even to their being signed by him, provided that they are read over and interpreted to him, and such statements may be useful as a basis of the examination in open Court, and possibly for impugnin statements there made on oath. But such statements should never be incorporated, as such, in the Official Assignee's report. In the present case, I had no hesitation in treating such statements as inadmissible.

As, in the opinion of the Court, the "facts" aimed at by subsections (c) and (j) of section 33 (6) of the ordinance, and referred to in paragraphs 32 and 34 of the Official Assignee's Report have been proved which prevented the bankrupt from being granted an order for immediate discharge, the discharge was ordered to be suspended for three months. In suspending the discharge for three months only, the Court took into consideration the very long period which elapsed before the bankrupt's application was attended to.

Discharge granted subject to suspension for 3 months.

Solicitor for the bankrupt—*A. de Mello.*

[REVISIONAL CRIMINAL JURISDICTION]

TERRELL, AG. C.J.

July 17, 1937.

REX v. TAN AH YEO

[SINGAPORE MAGISTRATE'S CASE No. 661 of 1937]

Nuisance—abatement—nuisance notice—legality of—closing order—Municipal Ordinance (Cap. 133), Ss. 244—249.

The Municipal Commissioners served a nuisance notice upon the owner of a certain attap premises alleged to have been " of such a construction and in such a state of repair as to be injurious to health." The notice called upon the owner within 30 days from the service thereof to abate the same " and for that purpose to demolish the above hut and the insanitary plant and attap dwelling to the south of it."

Held, on revision by the High Court, that the notice is *ultra vires* inasmuch as by it the Commissioners sought to obtain the result which can only be reached after an application to a Police Court under Section 247 of the Municipal Ordinance and inasmuch as it purports to require demolition which can only be directed by a Police Court upon a second complaint under Section 248 of the Ordinance when a closing order has not been complied with.

CRIMINAL REVISION.

A nuisance notice issued by the Municipal Commissioners, purporting to act under section 246 of the Municipal Ordinance, was served upon the accused requiring him to abate a nuisance (to wit, premises of such a construction and in such a state of repair as to be injurious to health) and to demolish the abovementioned hut within 30 days. The accused having failed to comply with the notice, a summons was issued to him and a closing order was made at the hearing by the Magistrate. Thereafter, at the instance of the Magistrate, the record was called for by the High Court under the provisions of Section 320 (1) of the Criminal Procedure Code.

In the Court below, Dr. C. H. Withers Payne appeared for the Municipal Commissioners and Mr. Aubrey V. L. Davies for the accused. Neither counsel appeared on the revision by the High Court. On the 17th July 1937 Mr. Justice A. K. a'Beckett Terrell, Acting Chief Justice, made an order setting aside the closing order. His Lordship gave the following grounds of revision:—

TERRELL, AG. C.J.—In this case a closing order was made upon the owner of a certain attap premises known as No. 137-1 Boon Keng Road, Singapore.

The record was called for by the High Court under the provisions of section 320(1) of the Criminal Procedure Code, and the closing order

may now be reviewed under the provisions of section 322.

It appears that a nuisance notice was served on the owner in May 1936. The notice alleges that the Commissioners, being satisfied of the existence of a nuisance, being

> " Premises of such a construction and in such a state of repair as to be injurious to health, do hereby require you within 30 days from the service of this notice to abate same and for that purpose to demolish the above hut and the insanitary plant and attap dwelling to the south of it"

Now the procedure under section 244 and the following sections of the Municipal Ordinance dealing with nuisance is reasonably clear. Section 244 provides that the Commissioners are to abate nuisances. Section 245 describes nuisances for the purpose of the Ordinance. Section 246 (1) deals with the form of a nuisance notice. Such notice shall be served on the owner, or other person responsible,

> " requiring him to abate the same, within the time specified in the notice, and to execute such works and do such things as are necessary for that purpose, and, if the Commissioners think it desirable specifying any works to be executed."

Section 247 provides for a complaint to the Police Court upon the nuisance order not being complied with. Upon such complaint the Police Court may make a nuisance order which may be an abatement order, or a prohibition order or a closing order or a combination of such orders.

Under section 248(1), if a closing order has been made and has not been cancelled by a subsequent order, the Commissioners may make a second complaint to the Police Court, if they are of opinion that:

> "(a) the dwelling house has not been rendered fit for human habitation
> (b) the necessary steps are not being taken with all due diligence to render it so fit; and
> (c) the continuance of any building being, or being part of the dwelling house is dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling houses."

Thereupon the Police Court may make a demolinuisance,

Now the form of a nuisance notice was considered in the case of *H. Nunes* v. *Song Kee Chuan* decided by Bucknill C.J. in 1916 and reported in 1935 S.S.L.R. p. 107. In that case the notice required the owner to abate the nuisance.

> " and for that purpose to remove the occupants and cease to use as a human dwelling."

Now the removal of the occupants is the effect of a closing order, and as the learned C.J. points out on p. 112

> " To order all the inhabitants to leave the house under this section (now section 246) is to give the Municipality the power which is expressly conferred upon the Police Court under section 227 (now section 247) which provides that *where there is non-compliance with a* nuisance notice the Commissioners may apply to the Police Court."

In the case before me the Commissioners have not been content merely to obtain by a nuisance notice the result which can only be reached after an application to the Police Court under section 247. The Notice in this case purports to require a demolition which can only be directed by a Police Court upon a second complaint under section 248 where a closing order has not been complied with.

The following passage, from the judgment of the Court in the case above referred to, may also be quoted:

> "The fact is that in their proper construction all provisions of this part of the Municipal Ordinance which deal with nuisance capable of being summarily dealt with contemplate only nuisances which are capable of abatement by the person charged, and where, as in this case, the position is that owing to structural defects a house dependent upon and connected with other houses of similarly faulty character is regarded as unfit for human habitation and is on that account irremediably defective it does not appear to me that it is open to the Municipality to attempt to deal with it separately and individually under the provisions of that part of the Ordinance which relates to the abatement of nuisances."

I feel no doubt therefore that the nuisance notice is *ultra vires* and bad and that the order made upon the summons must be set aside.

I should mention that this case was brought to my notice by the learned Magistrate himself. It appears that he had inspected the premises after giving his decision and in connection with another case. Upon such inspection he felt himself forced materially to alter his views upon the merits. If then I had not been of the opinion that the proceedings were wrongly instituted *ab initio* for the reasons given above, I should in any case have directed a retrial under the provisions of section 310(b)(i) of the Criminal Procedure Code.

Closing Order set aside.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.